LIBRARY
SUPREME COURT, U. S.
Supreme Court, U. S.
FILED
APR 26 1972

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No. 71 - 1389

PEOPLE EX REL. WILLIAM J. SCOTT,
ATTORNEY GENERAL,

vs.

JOHN A. GRIVETTI, ET AL.

CECIL A. PARTEE, INDIVIDUALLY AND AS CHAIRMAN OF THE ILLINOIS LEGISLATIVE REDISTRICTING COMMISSION, W. ROBERT BLAIR, INDIVIDUALLY AND AS VICE CHAIRMAN OF THE ILLINOIS LEGISLATIVE REDISTRICTING COMMISSION, AND THE ILLINOIS LEGISLATIVE REDISTRICTING COMMISSION,

Petitioners.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

PETER FITZPATRICK,
10 South LaSalle Street,
Chicago, Illinois 60603,
Attorney for Cecil Partee, individually and as Chairman of the Illinois Legislative Redistricting Commission, and the Illinois Legislative Redistricting Commission.

JEROME H. TORSHEN,
11 South LaSalle Street,
Chicago, Illinois 60603,
Attorney for W. Robert Blair, individually and as Vice Chairman of the Illinois Legislative Redistricting Commission, and the Illinois Legislative Redistricting Commission.

THE BUNTHORP-WARREN PRINTING COMPANY, CHICAGO

INDEX.

	PAGE
Opinions Below	2
Jurisdiction	2
Questions Presented	3
Constitutional Provision Involved	3
Statement	5
I. This Illinois Supreme Court's Discrimination Against Duly Elected Leaders of the Illinois Legislature Is in Violation of the Equal Protection Clause of the United States Constitution	7
II. Appointment of Legislative Aides to the Commission Was Proper	11
Conclusion	13
Appendix A	A1
Appendix B	A3
Appendix C	A19

AUTHORITIES CITED.

Baker v. Carr, 369 U. S. 181, 7 L. Ed. 663 (1962)	11
Cipriano v. City of Houma, 395 U. S. 701, 23 L. ed. 2d 647 (1969)	8
Dunn v. Blumstein, 40 Law Week 4269 (March 21, 1972), ... U. S.	7
Finazzo v. Mid-States Finance Company, 63 Ill. App. 2d 161, 211 N. E. 2d 290 (1965)	12
Hartford S. B. I. Ins. Co. v. Harrison, 301 U. S. 461, 81 L. ed. 1223 (1937)	8

Kotch v. River Port Pilot Commissioners, 330 U. S. 552, 91 L. Ed. 1093 (1947) 12

Kramer v. Union School District, 395 U. S. 621, 23 L. ed. 2d 583 (1969) 8

Morey v. Doud, 354 U. S. 457, 1 L. ed. 2d 1491 (1957) .. 8

Opinion to the House of Representatives, 80 R. I. 281, 96 A. 2d 623 (1953) 12

Smith v. Cahoon, 283 U. S. 565, 75 L. ed. 1264 (1931) .. 9

Superior Coal Co. v. Department of Finance, 377 Ill. 282 (1941) 12

Takahashi v. Fish Commission, 334 U. S. 410, 92 L. Ed. 1478 (1948) 10

Turner v. Fouche, 396 U. S. 346, 24 L. ed. 2d 567 (1970) 9

Williams v. Rhodes, 393 U. S. 23, 21 L. Ed. 2d 24 (1968) 9

CONSTITUTIONS, STATUTES AND RULES.

Constitution of the United States, Fourteenth Amendment 3, 7

28 U. S. C. § 1257(3) 2

Illinois Constitution of 1970, Article IV, Section 3(B). 3, 5

Illinois Constitution of 1970, Article IV, Section 6 8

An Act to Establish the Illinois Budgetary Commission:

Ill. Rev. Stat. (1969), ch. 127, sec. 193 ff.

Ill. Rev. Stat. (1967), ch. 127, sec. 193

Ill. Rev. Stat. (1959), ch. 127, sec. 193 10

An Act Concerning the Illinois Legislative Audit Commission:

Ill. Rev. Stat. (1967), ch. 63, sec. 105ff.

Ill. Rev. Stat. (1963), ch. 63, sec. 105

Ill. Rev. Stat. (1959), ch. 63, sec. 105 10

An Act Concerning the Illinois Chicago World Fair Commission:

Laws (1961), p. 3817, S. B. 831..... 10

An Act Concerning the Illinois Commission on New York World Fair:

Laws (1963), p. 1418, H. B. 836..... 10

An Act Concerning the Illinois Full Value Property Tax Assessment Study Commission:

Laws (1967), p. 4236, S. B. 1611
Laws (1965), p. 3097, S. B. 115..... 10

An Act Concerning the Illinois Board of Ethics:

Ill. Rev. Stat. (1969), ch. 127, sec. 606-101, ff.
Ill. Rev. Stat. (1967), ch. 127, sec. 606-101, ff..... 10

An Act Concerning the Illinois Legislative Space Needs Commission:

Ill. Rev. Stat. (1967), ch. 63, sec. 221, ff..... 10

An Act Concerning the Illinois Constitution Study Commission:

Laws (1969), p. 1110, P. S. 76-476
Laws (1967), p. 3581, H. B. 1376..... 10

An Act Concerning the Illinois State Government Study Commission:

Ill. Rev. Stat. (1969), ch. 63, sec. 221, ff.
Laws (1967), p. 4230, S. B. 1687..... 10

An Act Concerning the Illinois Interim Committee on Governor's Temporary Appointments to Fair Employment Practices Commission:

Ill. Rev. Stat. (1969), ch. 48, sec. 855..... 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No. .....

PEOPLE EX REL. WILLIAM J. SCOTT,
ATTORNEY GENERAL,

vs.

JOHN A. GRIVETTI, ET AL.

CECIL A. PARTEE, INDIVIDUALLY AND AS CHAIRMAN OF THE ILLINOIS LEGISLATIVE REDISTRICTING COMMISSION, W. ROBERT BLAIR, INDIVIDUALLY AND AS VICE CHAIRMAN OF THE ILLINOIS LEGISLATIVE REDISTRICTING COMMISSION, AND THE ILLINOIS LEGISLATIVE REDISTRICTING COMMISSION,

Petitioners.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

To the Honorable Chief Justice of the United States and the Associates Justices of the Supreme Court of the United States:

Your Petitioners, Cecil A. Partee, individually and as Chairman of the Illinois Legislative Redistricting Commission, W. Robert Blair, individually and as Vice Chairman of the Illinois Legislative Redistricting Commission, and the Illinois Legislative Redistricting Commission, respectfully pray that a writ of certiorari issued to review the judgment of the Supreme Court of Illinois entered in this proceeding on December 10, 1971, its subsequent opinion reprinted in 50 Ill. 2d 156, 277 N. E. 2d 881 and the order of said court issued January 27, 1972, denying Petitioners' Petition for Rehearing.

OPINIONS BELOW.

The opinion of the Supreme Court of Illinois in *People ex rel. William J. Scott, Attorney General* v. *John A. Grivetti, et al.* and the order denying the Petition for Rehearing are reprinted in Appendices hereto. Said opinion is also reprinted in appendices to pleadings in cases No. 71-999 and 71-1246 pending in this Court on appeal from a decision of the United States District Court for Northern District of Illinois, entered in companion cases. The opinion of the said three judge court is reprinted in appendices filed in connection with the aforesaid appeals.

JURISDICTION.

The judgment of the Supreme Court of Illinois was entered on December 10, 1971. A timely petition for rehearing was denied on January 27, 1972. This petition for writ of certiorari is filed within 90 days from the latter date. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(3).

QUESTION PRESENTED.

Whether a construction by the Illinois Supreme Court of the 1970 Illinois Constitution that said Constitution prohibits leaders of the Illinois General Assembly from appointing themselves to a Legislative Redistricting Commission to reapportion the state in absence of action by the State General Assembly causes Article IV, Section 3(b) of the said Illinois Constitution to be in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States in that it arbitrarily, unreasonably and unjustifiably excludes certain members of the General Assembly from participation in the redistricting process.

CONSTITUTIONAL PROVISION INVOLVED.

Article IV, Section 3(b) of the Illinois Constitution of 1970 provides:

> "(b) In the year following each Federal decennial census year, the General Assembly by law shall redistrict the Legislative Districts.
>
> If no redistricting plan becomes effective by June 30 of that year, a Legislative Redistricting Commission shall be constituted not later than July 10. The Commission shall consist of eight members, no more than four of whom shall be members of the same political party.
>
> *The Speaker and Minority Leader of the House of Representatives shall each appoint to the Commission*

one Representative and one person who is not a member of the General Assembly. The President and Minority Leader of the Senate shall each appoint to the Commission one Senator and one person who is not a member of the General Assembly. (Emphasis added.)

The members shall be certified to the Secretary of State by the appointing authorities. A vacancy on the Commission shall be filled within five days by the authority that made the original appointment. A Chairman and Vice Chairman shall be chosen by a majority of all members of the Commission.

Not later than August 10, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.

If the Commission fails to file an approved redistricting plan, the Supreme Court shall submit the names of two persons, not of the same political party, to the Secretary of State not later than September 1.

Not later than September 5, the Secretary of State publicly shall draw by random selection the name of one of the two persons to serve as the ninth member of the Commission.

Not later than October 5, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.

An approved redistricting plan filed with the Secretary of State shall be presumed valid, shall have the force and effect of law and shall be published promptly by the Secretary of State.

The Supreme Court shall have original and exclusive jurisdiction over actions concerning redistricting the House and Senate, which shall be initiated in the name of the People of the State by the Attorney General."

STATEMENT.

The instant action (an original action in the Supreme Court of Illinois) together with companion cases in the United States District Court for the Northern District of Illinois were brought to determine the validity and propriety of a redistricting plan for districts for the Illinois General Assembly prepared by the Illinois Legislative Redistricting Commission (hereinafter "the Commission").

A three judge federal court held the plan prepared by the Commission to be valid and proper under the Constitution of the United States in that it scrupulously followed the one-man one-vote principle and was free of invidious discriminatory features. The three judge court, however, did not rule on questions of state constitutional or statutory law insofar as said questions might otherwise affect the redistricting plan. In this regard, the three judge court deferred to the Illinois Supreme Court in which an original action was pending to determine the constitutionality of the plan under federal and state constitutional law.

Article IV, Section 3 of the 1970 Illinois Constitution provides that in the year following a federal decennial census, the Illinois General Assembly shall redistrict the legislative districts.

Said section further provides that if no redistricting plan becomes effective by a fixed date, a Legislative Redistricting Commission shall be constituted, consisting of eight members, no more than four of whom shall be members of the same political party. Said section further provides:

> "The Speaker and Minority Leader of the House of Representatives shall each appoint to the Commission

one representative and one person who is not a member of the General Assembly. The President and Minority Leader of the Senate shall each appoint to the Commission one Senator and one person who is not a member of the General Assembly."

In default of action by the Legislature, a Commission was appointed. The Speaker and Minority Leader of the House of Representatives and the President of the Senate each appointed themselves and their legislative aides to the Commission.

The Supreme Court of Illinois held that although the redistricting plan prepared by the Commission was valid and proper under the Illinois Constitution, the court in a split decision, found that the Commission itself was illegally constituted in that the aforementioned three leaders ap-appointed themselves and their legislative aides to the Commission.

Thereafter, the Supreme Court of Illinois adopted the redistricting plan prepared by the Commission as a provisional redistricting plan for the election of members of the General Assembly of Illinois in 1972 only and directed that a new redistricting plan be drawn for subsequent elections.

This petition for writ of certiorari seeks review of the decision of the majority of the Illinois Supreme Court and is addressed solely to the issue of the propriety and constitutional validity of self-appointment to the Commission by the legislative leaders.

I.

THIS ILLINOIS SUPREME COURT'S DISCRIMINATION AGAINST DULY ELECTED LEADERS OF THE ILLINOIS LEGISLATURE IS IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION.

The Fourteenth Amendment to the Constitution of the United States commands that no state shall deny to any person equal protection of the laws. "Equal protection" demands that legislative leaders be afforded the rights available to *all* legislators. The Illinois Supreme Court, in the majority's opinion, has construed the 1970 Constitution so as to cause it to conflict with the "equal protection" clause by arbitrarily excluding leaders from the privilege of serving on the Commission.

To decide whether a law violates the equal protection clause, the Court generally looks to three things: the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification. In considering laws challenged under the equal protection clause, this Court has evolved more than one test, depending upon the interests affected and the classification involved. In the present case, whether the Court looks to the benefit withheld by the classification (the opportunity to serve on the Commission) or the basis for classification (legislative leadership having an appointment power), the state must show a substantial and compelling reason for barring participation in the Commission. See *Dunn* v. *Blumstein* (Opinion March 21, 1972) 40 Law Week 4269 at page 4271.

In the instant case, there is no compelling state reason to bar *any* legislators from participation in the Commission.

The General Assembly and its two major parties must have leaders. This is recognized and provided for by

Article IV, Section 6 of the 1970 Illinois Constitution. The leaders are legislators elected from their respective districts to perform legislative functions on behalf of their constituencies and the people of the state. Although they are elected to leadership roles within the General Assembly, they remain legislators. There is nothing expressed in the 1970 Illinois Constitution to detract from their right to perform legislative functions. The Illinois Supreme Court, however, holds that legislators occupying leadership positions are less privileged than other legislators in that they cannot serve and function in the area of reapportionment. The Illinois Supreme Court has thus limited their participation in political affairs in violation of their own standing and in derogation of the rights of their constituencies which elected representatives in the expectation that they would be able to take part in all legislative activities.

This Court consistently holds that a "close and exacting examination" must be given to a state constitutional provision which discriminates in determining who may participate in political affairs because "any unjustified discrimination in determining who may participate in political affairs . . . undermines the legitimacy of representative government." See *Kramer* v. *Union School District,* 395 U. S. 621, 626, 23 L. ed. 2d 583, 589 (1969). See also *Cipriano* v. *City of Houma,* 395 U. S. 701, 706, 23 L. ed. 2d 647, 651-52 (1969). The Illinois Supreme Court, acting as an agency of the state, has sought to construe the 1970 Illinois Constitution to create a discrimination against certain legislators without compelling reason and without basis in the Constitution. This discrimination cannot be justified.

Any classification which lacks a reasonable and just relation to the object of the law is arbitrary, invidious and denies equal protection of the law. *Turner* v. *Fouche,* 396 U. S. 346, 362, 24 L. ed. 2d 567, 580 (1970); *Morey* v. *Doud,* 354 U. S. 457, 1 L. ed. 2d 1491, 1491-92 (1957); *Hartford*

S. B. I. Ins. Co. v. *Harrison,* 301 U. S. 461, 81 L. ed. 1223, 1227 (1937); *Smith* v. *Cahoon,* 283 U. S. 565, 75 L. ed. 1264, 1275 (1931). In *Turner* v. *Fouche,* 396 U. S. 346, 24 L. ed. 2d 567 (1970) this Court held unconstitutional as in violation of the equal protection clause a Georgia statute which limited the right to be appointed to the board of education to "freeholders." The Court held:

> ". . . The appellants and the members of their class do have a federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualifications. The State may not deny to some the privilege of holding public office that it extends to others on the basis of distinctions that violate federal constitutional guarantees." (396 U. S. at 362, 24 L. Ed. 2d at 580)

In the instant case, the legislative leadership is deprived of the "right to be considered for public service" in the most important area of redistricting because of an arbitrary classification being read into the 1970 Constitution by the Illinois Supreme Court.

In determining whether there has been a reasonableness of classification, the facts and circumstances behind the law should be considered. See *Williams* v. *Rhodes,* 393 U. S. 23, 30, 21 L. Ed. 2d 24 (1968). There is no language or circumstance which in any way demonstrates that the draftsmen of the 1970 Illinois Constitution sought to discriminate against any legislator insofar as appointment to the Commission is concerned. Self-appointment to the Commission by a leader would not place him in a position of conflict of interest nor enable him to reap pecuniary gain. It would only enable him to more completely perform his duties and undertake the responsibilities thrust upon him when he was elected to the legislature.

As stated by Chief Justice Underwood of the Illinois Supreme Court in his separate opinion, the language of

the Constitution "may . . . easily be construed to manifest an intent to grant complete flexibility in the exercise of the appointing power." Such construction would accord with prior practice in Illinois.*

The majority's classification of legislators unreasonably denies to the leaders an equality of legal privilege to participate in all facets of the legislature's activities. This limitation is unjustified by the language of the 1970 Constitution and is contrary to the guarantee of equal protection found in the Constitution of the United States. *Takahashi* v. *Fish Commission*, 334 U. S. 410, 420, 92 L. Ed. 1478 (1948). To read such language into the 1970 Constitution subjects it to constitutional infirmities when viewed against the United States Constitution.

---

* There had been extensive use of legislative commissions in Illinois prior to the constitutional convention. Among the commissions provided for by statute prior to the constitutional debates were the Budgetary Commission, Ill. Rev. Stat. (1959), ch. 127, sec. 193; Ill. Rev. Stat. (1967), ch. 127, sec. 193; Ill. Rev. Stat. (1969), ch. 127, sec. 193 ff.; Legislative Audit Commission, Ill. Rev. Stat. (1959), ch. 63, sec. 105; Ill. Rev. Stat. (1963), ch. 63, sec. 105; Ill. Rev. Stat. (1967), ch. 63, sec, 105 ff.; Chicago World Fair Commission, Laws (1961), p. 3817; S. B. 831; Illinois Commission on New York World Fair, Laws (1963), p. 1418; H. B. 836; Full Value Property Tax Assessment Study Commission, Laws (1965), p. 3097; S. B. 115; Laws (1967), p. 4236; S. B. 1611; Board of Ethics, Ill. Rev. Stat. (1967), ch. 127, sec. 606-101 ff.; Ill. Rev. Stat. (1969), ch. 127, sec. 606-101 ff.; Legislative Space Needs Commission, Ill. Rev. Stat. (1967), ch. 63, sec. 221 ff.; Constitution Study Commission, Laws (1967), p. 3581; H. B. 1376; Laws (1969), p. 1110; P. S. 76-476; State Government Study Commission, Laws (1967), p. 4230; S. B. 1687; Ill. Rev. Stat. (1969), ch. 63, sec. 221 ff.; and Interim Committee on Governor's Temporary Appointments to Fair Employment Practices Commission, Ill. Rev. Stat. (1969), ch. 48, sec. 855.

II.

APPOINTMENT OF LEGISLATIVE AIDES TO THE COMMISSION WAS PROPER.

The Illinois Supreme Court has also erroneously condemned the appointment to the Commission of legislative aides. The 1970 Illinois Constitution provides for the appointment to the Commission of persons who are legislators and persons who are not members of the legislature. Legislative aides are not members of the legislature. Moreover, they are the best suited lay persons for the exacting and prodigious task of redistricting which, by constitutional mandate, must be completed within a minimal time period.

It is imperative that the Commission accomplish a great deal of work in a short time. The Commission cannot be permitted to become a debating society with opposing groups talking at each other rather than working together. The legislative aides are accustomed to doing legislative work. Of all laymen who might become involved in reapportionment, they are the least likely to begin arguing spurious policy issues with one another. The legislative aides are peculiarly suited to recognize that the task of the Commission is not one of policy making in the broad legislative sense but is more closely related to "housekeeping". The impact of *Baker* v. *Carr* and the decennial census require a redrawing of district lines to enable all votes to be weighted equally. The legislative aides are aptly suited to work with legislators on the Commission to accomplish the work necessary to the redistricting task in the allotted time.

There is no particular category or classification into which legislative aides fall other than that of non-membership in the legislature. To deprive legislative aides of the right to serve on commissions to which other laymen may

be appointed is also a violation of their right to equal protection of the laws. (See Part I hereof) Legislative aides are unreasonably deprived of the ability to participate in political affairs and are denied an equality of legal privileges. The appointment to public office of relatives and friends is consistent with public policy in most states. See *Kotch* v. *River Port Pilot Commissioners,* 330 U. S. 552, 563, 91 L. Ed. 1093, 1100 (1947). See also *Opinion to the House of Representatives,* 80 R. I. 281, 96 A. 2d 623 (1953) (holding unconstitutional as a denial of equal protection the statute which would bar relatives of municipal officers or department heads from public office). There also is no sound reason why legislative aides should be barred from the Commission.

Here, the Illinois Supreme Court justifies disqualification of legislative aides on the ground that they are "alter egos" of the legislators. Customarily, the determination that one person is an "alter ego" of another is a question of fact. See *Superior Coal Co.* v. *Dept. of Finance,* 377 Ill. 282, 284, 289-90 (1941); *Finazzo* v. *Mid-States Finance Company,* 63 Ill. App. 2d 161, 211 N. E. 2d 290, 298 (1965). If the Illinois Supreme Court is to be permitted to make this factual determination, it should, in accord with due process requirements hold an evidentiary hearing on the question. The mandamus proceeding bringing this matter before the Illinois Supreme Court is an original proceeding. For the Court arbitrarily to deny to a class of persons the ability to serve by making a factual determination without evidence is unfair and improper. The Court's action raises serious Fourteenth Amendment equal protection and due process questions not only with regard to the 1970 Illinois Constitution provision but also as regards the nature of the Illinois Supreme Court's original jurisdiction.

Before disqualifying legislative aides on "alter ego" grounds, the Illinois Supreme Court should be required

to hold a hearing. If it is determined that the legislative aides were alter egos of legislators, then perhaps they may be disqualified. However, in so disqualifying them for that reason violence will not be done to the equal protection or due process clauses nor will an unjustified constitutional principle be established.

CONCLUSION.

By virtue of the foregoing, petitioners respectfully pray that a writ of certiorari be granted to review the judgment of the Supreme Court of Illinois.

Respectfully submitted,

PETER FITZPATRICK,
10 South LaSalle Street,
Chicago, Illinois 60603,
Attorney for Cecil Partee, individually and as Chairman of the Illinois Legislative Redistricting Commission, and the Illinois Legislative Redistricting Commission, Petitioners,

JEROME H. TORSHEN,
11 South LaSalle Street,
Chicago, Illinois 60603,
Attorney for W. Robert Blair, individually and as Vice Chairman of the Illinois Legislative Redistricting Commission, and the Illinois Legislative Redistricting Commission, Petitioners.

APPENDIX A.

IN THE SUPREME COURT OF ILLINOIS.

PEOPLE OF THE STATE OF ILLINOIS ex rel. WILLIAM J. SCOTT, Attorney General,
Petitioner-Plaintiff,
vs.
JOHN A. GRIVETTI, et al.,
Respondents-Defendants.

No. 44744.

ORDER.

With the knowledge and approval of all members of this Court its Chief Justice has conferred with Circuit Judge Sprecher of the United States Court of Appeals, sitting with District Judges Austin and Napoli of the United States District Court for the Northern District of Illinois as a three-judge court, regarding resolution of the Federal constitutional questions posed in the Illinois legislative redistricting cases presently pending before both courts.

All members of this Court agree, for reasons which will appear in an opinion which will be filed, that neither the legislative redistricting plan before us nor the procedures involved in its formulation and adoption are violative of Federal constitutional provisions.

All members of this Court, except as later noted, are also in agreement that the action of the legislative leaders (the president pro tem of the Senate, the Speaker and Minority Leader of the House of Representatives) in appointing themselves and their legislative aides as members of the Redistricting Commission, which drafted and

approved the plan before us, was a clear violation of section 3(b) of Article IV of the Constitution of 1970. All members of this Court, with the exception hereafter noted, are also in agreement that the product of the Redistricting Commission, as thus constituted, is void.

We find the redistricting plan produced by the Commission to be otherwise free from State or Federal constitutional objection, and we hereby adopt that plan as a provisional redistricting plan for the State of Illinois.

Chief Justice Underwood agrees that appointment of the legislative aides was clearly violative of the purpose and intent of section 3(b). He does not agree that self-appointment by the Legislative leaders is prohibitive, would hold the Redistricting Commission a *de facto* body and its product valid.

We express our appreciation to Circuit Judge Sprecher and to District Judges Austin and Napoli for their co-operation in accomplishing and expeditious resolution of these problems.

ENTER: December 10, 1971.

/s/ Robert C. Underwood, C. J.
/s/ Walter V. Schaefer, J.
/s/ Thomas E. Kluczynski, J.
/s/ Daniel P. Ward, J.
/s/ Charles H. Davis, J.
/s/ Joseph H. Goldenhersh, J.
/s/ Howard C. Ryan, J.

APPENDIX B.

Docket No. 44744—Agenda 1—November, 1971.

THE PEOPLE, *ex rel.* WILLIAM J. SCOTT, Attorney General, *Petitioner* v. JOHN A. GRIVETTI, *et al.*, *Respondents.*

PER CURIAM: Decision of this case was announced by our order of December 10, 1971, released simultaneously with the opinion of the three-judge Federal court composed of Circuit Judge Sprecher and District Judges Austin and Napoli. Our December 10 order expressed to Judges Sprecher, Austin and Napoli our appreciation for their cooperation in accomplishing an expeditious resolution of the problems concurrently presented to both courts. That order indicated an opinion would be filed setting forth the reasons for the conclusions which we reached. This is that opinion.

This is an original action which presents for our consideration the question of the constitutional validity of the decennial redistricting plan for Illinois House and Senate districts filed with the Secretary of State by the Legislative Redistricting Commission. Six other actions challenging the redistricting of the Illinois legislative districts were pending in the Federal District Court for the Northern District of Illinois at the time of commencement of these proceedings. All of the plaintiffs in those actions have been impleaded as respondents in this case, and it appears that all substantive issues before the Federal court are also raised in this proceeding. In view of the recognized state judicial power "to require valid reapportionment or to formulate a valid redistricting plan" (*Scott* v. *Germano*, 381 U. S. 407, 408, 14 L. Ed. 2d 477, 85 S. Ct. 1525), and because the date for filing of nominating petitions for the House and Senate was fast approaching we expedited the hearing and disposition of this case.

The method of redistricting the State legislative districts is set forth in section 3(b) of article IV of the 1970 constitution. That section provides in relevant part that "in the year following each Federal decennial census year, the General Assembly by law shall redistrict the Legislative Districts. If no redistricting plan becomes effective by June 30 of that year, a Legislative Redistricting Commission shall consist of eight members, no more than four of whom shall be members of the same political party." With regard to the manner of selection of the Commission, the constitution provides that "the Speaker and Minority Leader of the House of Representatives shall each appoint to the Commission one Representative and one person who is not a member of the General Assembly. The President and Minority Leader of the Senate shall each appoint to the Commission one Senator and one person who is not a member of the General Assembly." Section 3(b) further states that "not later than August 10, the Commission shall file with the Secretary of State redistricting plan approved by at least five members." It is also provided that "an approved redistricting plan filed with the Secretary of State shall be presumed valid, shall have the force and effect of law and shall be published promptly by the Secretary of State."

The 77th General Assembly failed to redistrict itself prior to June 30, 1971 following the decennial census year of 1970. Accordingly, a Legislative Redistricting Commission was constituted. The Speaker and Minority Leader of the House of Representatives and the President Pro-Tem of the Senate each appointed themselves to the Commission and also appointed their respective legislative aides as non-General Assembly members of the Commission. The Minority Leader of the Senate appointed another Senator of his choice to the Commission and also appointed another individual as a non-General Assembly member of the Com-

mission. Thus constituted, the Commission adopted a redistricting plan and filed it with the Secretary of State prior to the August 10, 1971, deadline. It is this plan which is now before us for review.

The five primary issues raised in oral argument and in the pleadings filed by the various parties herein may be summarized as follows: (1) Is section 3(b) of article IV of our constitution violative of the Federal constitution in that it places the selection of the Redistricting Commission under the control of the majority and minority leaders of the House and Senate; (2) Was the Legislative Redistricting Commission properly selected in accordance with section 3(b) of article IV of the constitution; (3) Did the redistricting plan meet the State and Federal "one man-one vote" constitutional requirement and the further requirement of the Illinois constitution that all districts be compact and contiguous; (4) Is the redistricting plan invalid in that it does not adhere strictly to traditional and political boundaries; and (5) What is the effect of certain "corrections to the redistricting plan filed with the Secretary of State by members of the Legislative Redistricting Commission on November 5, 1971?

As to the first issue, certain of the respondents contend that section 3(b) of article IV of our constitution is violative of the first amendment and the equal protection clause of the fourteenth amendment to the constitution of the United States in that it places control over the redistricting process in the hands of the major-party leaders and excludes any participation by representatives of other political parties or independent voters; *i.e.*, there is a denial of access to reapportionment proceedings to all persons who are not affiliated with, or members of, the two major parties. On its face section 3(b) neither restricts membership on the Commission to particular political parties or persons claiming particular interests nor does it

exclude them. More importantly, however, there has been no showing in this case of how the provisions in question have any legally harmful effect on respondents. Respondents imply that unless they take part in the selection of the Legislative Redistricting Commission their interests will not be represented on the Commission with the result that any redistricting plan adopted by the Commission inevitably will discriminate against them. This argument is highly speculative and abstract and, in our opinion, does not provide any basis for a legal remedy. If every group having particular political viewpoints or alleging particular interests was required to be directly involved in the selection of the Commission or directly represented on the Commission itself, it is obvious that the group selecting the Commission and the Commission itself would reach almost boundless and unworkable proportions. It must also be remembered that section 3(b) places initial responsibility in the legislature to adopt a redistricting plan. At this stage the redistricting process is entirely under the control of a body elected by all the people. Only when the legislature fails to fulfill its duty to redistrict does the smaller, eight member Legislative Redistricting Commission come into being to accomplish that task. In our opinion, this is neither an unreasonable nor discriminatory method of attempting to provide a solution to legislative nonfeasance. Also, in drawing the districts, the Commission is clearly bound by section 3(a) of article IV which provides that "legislative districts shall be compact, contiguous and substantially equal in population." If the Commission complies with this constitutional mandate, a matter which is subject to judicial review, then all voters of the State of Illinois will thereafter have an equal voice in electing State legislators. We conclude that section 3(b) of article IV of the constitution on its face is not violative of the first amendment and the equal protection clause of the fourteenth amendment to the United States constitution and

does not infringe upon any constitutionally protected interests of the respondents in this case.

It is also argued that section 3(b) of article IV of the constitution reflects an improper delegation of legislative power. The answer to this contention is that we are not here concerned with a State legislative enactment which purports to delegate functions of a legislative nature, but rather with a provision of our State constitution which expressly directs the redistricting of the legislature by the Legislative Redistricting Commission in accordance with specified standards. It is clear that no real delegation of power question under either the State or Federal constitutions is involved in this case.

It is further contended that the Legislative Redistricting Commission created by section 3(b) of article IV was illegally composed in that three of the persons having appointive power appointed not only themselves but also their legislative aides to the Commission.

We agree, for the purpose of section 3(b) of article IV is, in our judgment, completely clear. As originally proposed to the 1970 Constitutional Convention by the committee on the legislature, it provided for a redistricting commission composed of eight members of the legislature, two of whom were to be appointed by the majority leader, and two by the minority leader in each house. That proposal was predicated on the fact that the original committee recommendation excluded the legislature from the reapportionment process. On first reading, however, the procedure was changed to give the legislature the first opportunity to reapportion. Thereafter an amendment, cosponsored by others, was offered by Delegate Perona, the substantive effect of which was to reduce the legislative representation on the eight-member commission to four, to be selected in the same manner as the original eight. The other four commission members were to be appointed

by the same legislative leaders but were to be "person[s] who [are] not" members of the General Assembly.

The explanation of that amendment as given by Delegate Perona in the debates preceding its adoption is in part as follows: "it is the position of the supporters of this amendment, who include myself, Mr. Lewis, Mrs. Reum, Mr. Peccarelli and Mr. Sommerschild, Mrs. Pappas, Mr. Martin, Mrs. Netsch and Mr. Parkhurst, that given the opportunity in the Legislature to have first crack at the process of apportionment that it would be wise in the second step of the process to introduce some nonlegislative members to hopefully, if necessary, bring in a new viewpoint of a little different point of view to the process. This amendment in the place of an eight member legislative commission would substitute four legislative members and four non-legislative members. They would still be appointed by the same persons and the equal party division would remain the same. We feel that this concept is in line with the original concept but because of the change in situation insofar as the procedure, that this would be an advantage and a change that would make sense with this situation in existence. Sixth Illinois Constitutional Convention Debates, Vol. 107, pp. 338-39.

Other delegates in the course of their arguments supporting the subsequently adopted amendment stated the inclusion of the four public members would "inject a little new blood, so to speak, into the process of reapportionment" (Delegate Evans at 341); "I think it's rather ridiculous to have a reapportionment commission which acts after the legislature has failed to reapportion, which is wholly legislative in nature" and the amendment would "put some life back in the process". (Delegate Sommerschield at 342). The Perona amendment was adopted by a vote of 54 to 26.

It is abundantly clear that the intent of the delegates to the 1970 Constitutional Convention was to create a redistricting commission composed of four legislators and four public members, and their purpose in so doing was to bring into the commission a fresh, perhaps more objective, approach to the apportionment problems which had deadlocked the legislature. By requiring one half of the commission's membership to be individuals not theretofore involved in the legislative redistricting struggles, the prospects of the commission's success were thought to be enhanced.

While appointment to membership on the commission of their legislative aides by the President Pro Tem of the Senate and the Speaker and Minority Leader of the House was a literal compliance with the language of section 3(b), since these aides were not, in the strict sense, "members of the General Assembly," that action was, in reality and in practical effect, a subversion of the purpose of that language. Nor do we believe the action of the President Pro-tem of the Senate and the Speaker and Minority Leader of the House of Representatives in appointing themselves to the commission was authorized by the Constitutional provisions. Had such action been contemplated, section 3(b) would have so stated, particularly when it is considered that the public policy against self-appointment is of long standing and well known. The fact that no compensation is provided for members of the commission is immaterial.

The net result of this action was, in our judgment, the same as though six members of the legislature had been appointed, for, although the aides were not technically members of that body, it is obvious that, as its employees and assistants to its leaders, they could scarcely be thought to be independent of it. Clearly they were not representative of the general public nor likely to bring to the re-

apportionment proceedings the "fresh aproach" envisional by the delegates at the time the amendment mandating the appointment of four public members was adopted.

The thwarting of the purpose of the "public member" provision is even more apparent when the actual result of the commission's deliberations is analyzed. The redistricting plan adopted by the commission received the approving votes of six of its eight members. Those six votes were cast by the self-appointed legislative members and their aides. Senator Clarke and former Governor Stratton (both of whom had been appointed by the Minority Leader of the Senate) voted against the plan. It is, of course, apparent, that violation of the constitutional mandates that the commission be composed one half of legislators and one half of public members resulted in almost total exclusion of the public, since seven of the eight commission members were either legislative members or their alter egos. Under these circumstances, to hold the commission a *de facto* body and its product valid would sanction an impermissible violation of the constitution's commands.

The dissenting opinion would sanction the continuation of the violation or disregard of constitutional provisions that prevented legislative reapportionment in this State under the constitution of 1870. The extensive dictum in that opinion concerning the desirability of a "ten-year plan" assumes that within each ten-year span there will be no population shifts which will require reapportionment under the Federal constitution. It also assumes that action by an illegally constituted commission will be less heavily partisan than action by the General Assembly. In our opinion neither assumption is warranted.

While we recognize that under less extraordinary circumstances the rule followed in cases such as *Engle* v. *Kerner*, 32 Ill. 2d 212, *People ex rel. Chillicothe Twp.* v. *Board of Review*, 19 Ill. 2d 424, and *Leach* v. *People ex rel.*

Patterson, 122 Ill. 420, might well prevail and the commission be considered a *de facto* body and its work product valid, we believe that rule cannot here prevail. The fundamental difference between those cases and this is manifest. In *Engle* we held our State Senate, the members of which had been elected from unconstitutionally apportioned districts, was composed of *de facto* officeholders with authority to act; in *Chillicothe Twp.* a board of review with two Democratic—one Republican membership was held to be composed of *de facto* officers and its acts valid as to their parties even though the statute governing membership on the board apparently required, in view of the results of the immediately preceding election, a two Republican—one Democratic division; in *Leach* members of a board of supervisors elected pursuant to a statute held to be unconstitutional were nonetheless held to be *de facto* officers. It will be observed that in those instances, the defect in the appointment or election arose, not from the acts of the individuals whose subsequent performance of the duties is challenged, but from sources beyond their control. Here, the opposite is true. The presence of the legislative leaders and their aides upon the Redistricting Commission is the direct result of the acts of those individuals. Under these circumstances we do not believe they can be accorded a *de facto* status which would validate the resulting plan. The strong public policy against self-appointment described in 3 McQuillen, Law of Municipal Corporation, 3d Ed. sec. 12.75, and 43 Am. Jur. Public Officers, sec. 97, precludes recognizing as valid a product formulated by means so completely at variance with the constitutional mandate. *State* v. *McDaniel,* 52 Del. 304, 157 A. 2d 463; *State* v. *Thompson,* 193 Tenn. 325, 246 S. W. 2d 59; *Arbogast* v. *Shields,* 123 W. Va. 41, 14 S. E. 2d 4, 7; *Ehlinger* v. *Clark,* 117 Tex. 547, 8 S. W. 2d 666.

In view of our previously exercised responsibility (*People ex rel. Scott* v. *Kerner,* 32 Ill. 2d 539; *People ex*

rel. Engle v. *Kerner*, 33 Ill. 2d 11) to determine that the legislative body of this State is elected pursuant to a constitutionally valid plan, we proceed to consider whether the plan before us complies with other State and Federal constitutional requirements and is therefore suitable for adoption by us as a provisional reapportionment plan.

It is well settled as a matter of Federal constitutional law that State legislative district must meet the "one man-one vote" equality of population requirement. (*Hadley* v. *Junior College District*, 397 U. S. 50, 25 L. Ed. 2d 45, 90 2d 519, 89 S. Ct. 1225; *Reynolds* v. *Sims*, 377 U. S. 533, 12 L. Ed. 2d 506, 84 S. Ct. 1362; *Baker* v. *Carr*, 369 U. S. 186, 7 L. Ed. 2d 663, 82 S. Ct. 691; *Wesberry* v. *Sanders*, 376 U. S. 1, 11 L. Ed. 2d 481, 84 S. Ct. 526.) The 1970 Federal Decennial Census shows that the State of Illinois has a population of 11,113,976. Consequently, the mathematically "perfect" population of each of the State's 59 legislative districts would be 188,372. The actual population, as indicated by the Commission, of each of the new legislative districts deviates less than 1% from this "perfect" figure. In our opinion, the plan complies as closely as reasonably possible with the Federal "one man-one vote" requirement and the corresponding provisions of section 3(a) of article IV of our constitution that all legislative districts shall be "substantially equal in population."

Certain of the respondents in this case contend that the redistricting plan does not meet the requirements of section 3(a) of article IV of the Illinois constitution that legislative districts shall be compact and contiguous. It is apparent that not all of the legislative districts are perfectly compact, and it is equally apparent that some districts are more physically compact than others. However, compactness, while an end to be sought in the redistricting process, is clearly subservient to the dominant requirement of equality of population among legislative districts. In

view of this fact, and upon consideration of the plan as a whole, we are of the opinion that the plan contains reasonably compact and contiguous legislative districts and is not violative of section 3(a) of article IV of the constitution.

It is further argued by respondents that the redistricting plan is invalid because it fails to take into account traditional political boundary lines. As an example, it is pointed out that the city of Evanston is divided between two legislative districts, each of the villages of Oak Park and Skokie is divided between three districts, and the village of Arlington Heights is divided between four districts. Respondents contend that these divisions effectively diminish the power of the citizens of each municipality as a group to elect representatives of their choice to the General Assembly. They argue further that under the redistricting plan they do not share a community of interest with individuals in other parts of the newly created districts. We can well understand the respondents' desire that their respective municipalties be located within one single legislative district. With respect to congressional redistricting, the United States Supreme Court has held that there is no justification for any population variances which result from a State's Attempt to avoid fragmenting political subdivisions by drawing congressional district lines along existing county, municipal or other political subdivision boundaries. (*Kirkpatrick* v. *Preisler*, 394 U. S. 526). While this holding many not necessarily apply with full force and effect to the redistricting of state legislative districts (*Reynolds* v. *Sims*, 377 U. S. 533) or to redistricting involving county government (*Abate* v. *Mundt*, 403 U. S. 182, 29 L. 1d. 2d 399, 91 S. Ct. 1904), it is nevertheless very clear that the "one man-one vote" requirement must be the controlling consideration in the apportionment of seats in any particular legislative body. Considering the

high density of population in the area surrounding Chicago and the large number of municipalities of diverse size and population within that area, we think it would be practically impossible to conceive a redistricting plan which would keep every municipality intact and at the same time comply with the Supreme Court's "one man-one vote" rule. We note also that there is no question here of the type of invidious discrimination of a racial or even political nature which the court has frowned upon in the past (*Burns* v. *Richardson*, 384 U. S. 73, 16 L. Ed. 2d 376, 865 S. Ct. 1286; *Fortson* v. *Dorsey*, 379 U. S. 433, 13 L. Ed. 2d 401, 85 S. Ct. 498; *Gomillion* v. *Lightfoot*, 364 U. S. 339, 5 L. Ed. 2d 110, 81 S. Ct. 125.) Accordingly, it is our opinion that this redistricting plan may be adopted despite the obvious fragmentation of the established political subdivisions.

The redistricting plan heretofore filed with the Secretary of State of Illinois on August 7, 1971, as subsequently corrected, in our opinion complies with both State and Federal constitutions: It is therefore adopted by this court as a provisional redistricting plan for the election of members of the General Assembly of this State in 1972. A redistricting plan for subsequent elections shall be adopted pursuant to the procedures outlined in section 3 of article IV of the 1970 constitution of this State.

Provisional redistricting plan adopted.

MR. CHIEF JUSTICE UNDERWOOD, concurring in part and dissenting in part:

I am in agreement with the opinion of the Court except in two respects: I do not believe the action of the President Pro Tem of the Senate and the Speaker and Minority Leader of the House of Representatives in appointing themselves as members of the Redistricting Commission was

necessarily repugnant to the intent and purpose of section 3(b); and, in my judgment, the Commission should be held to be composed of three *de facto* and five *de jure* officers and its product a valid plan.

In my opinion the very substantial majority of the reported decisions, both in Illinois and elsewhere, support the conclusion that the legislative aides to the President Pro Tem of the Senate and to the Speaker and Minority Leader of the House were *de facto* members of the Commission and their acts in that capacity valid as to third parties or when those acts concerned the public as they necessarily did here. As this court said in *People ex rel. Hell* v. *Wheeler*, 353 Ill. 147, 150: "The commissioners had power to make a temporary appointment of a treasurer and thus create a *de jure* officer. Though their appointment was of one who was not entitled or qualified to serve, yet it has many times in this State been held that the acts of one acting as a *de facto* officer are valid when they concern the public or the rights of third persons who have an interest in the act done. * * * Such a person will be considered a *de facto* officer though there may be irregularities in his appointment or lack of qualification on his part which would be fatal to his title in a direct proceeding. [Citing cases.]." See also, *People ex rel. Engle* v. *Kerner*, 32 Ill. 2d 212; *People ex rel. Chillicothe Twp.* v. *Board of Review*, 19 Ill. 2d 424; *Leach* v. *People ex rel. Patterson*, 122 Ill. 420; *Gladson* v. *Wilson*, 196 Ark. 996, 120 S. W. 2d 732; *State ex rel. Hawthorne* v. *Wiseheart*, 158 Fla. 267, 28 So. 2d 589; *Hetrich* v. *County Com'rs. of Anne Arundel County*, 222 Md. 304, 159 A. 2d 642; *Commonwealth ex rel. McCreary, Dist. Atty.* v. *Major*, 343 Pa. 355, 22 A. 2d 686; *State ex rel. Keeney* v. *Ranslow*, 21 Conn. Supp. 294, 154 A. 2d 526.

The self-appointment by the legislative leaders condemned by this court deserves separate treatment. That

condemnation is predicated upon the strong public policy against such action. That public policy has been announced, however, only—so far as I am aware—in those cases where the governing law did not authorize members from the appointing group to serve upon the body or in the office to which the appointment is made. Here, however, we have a significant and, I believe, a controlling distinction. Section 3(b) specifically provides that two senators and two representatives shall be appointed to the Commission. I am not at all certain that the self-appointment is contrary to public policy nor inconsistent with the intent of the framers of the constitution. The cases relied upon by respondents, in McQuillen, Law of Municipal Corporations, 3d ed. sec. 12.75, and in American Jurisprudence (42 Am. Jur. Public Officers, sec. 97), generally speaking, dealt with situations where municipal officers exercised appointive powers to place themselves in other remunerative positions in municipal government. The appointments there were self-serving in nature, and the conflicts of interest inherent in the appointments were apparent. Here, to the contrary, I see in the presence upon the Commission of the legislative leaders nothing inconsistent with the constitutional provision, and the self-appointment aspects of the matter do not involve the objectionable characteristics found in the cases and text material cited by respondents and the court. Nor do I agree that failure of the Constitution to specifically authorize service by the President Pro Tem, Speaker and Minority Leader upon the Commission necessarily manifests an intent that they shall not appoint themselves. It may as easily be construed to manifest an intent to grant complete flexibility in the exercise of the appointing power.

Consequently, while I am in complete agreement that the appointment of the legislative aids was improper, I do not find in the self-appointment by the legislative leaders the objections apparently seen by my colleagues.

The differences between my views and those of my colleagues may, at first reading, seem too unimportant to warrant a dissent. On the contrary, it is, in my opinion, quite an important difference. As I understand our constitutional provisions incorporated in section 3(b), reapportionment shall occur "in the year following each Federal decennial census", and adoption of a redistricting plan is insured by a series of provisions, imposing that duty upon the General Assembly initially. Should it fail to succeed by mid-year, a Redistricting Commission of eight members (no more than four from one political party) comes into being; failure of five members of that Commission to agree upon a plan results in the random choice of a "tie-breaker" (one of two persons of different political parties named by this court). This well-considered plan comes as close as human limitations permit to guaranteeing a reapportionment plan for this State in the year following each decennial census. Such plan, as I understand the constitution, will then prevail for the decade following its adoption—assuming, of course, it meets Federal and State constitutional requirements. Clearly, it is intended that it not be subject to change within that ten-year period, unless that change is necessitated by population shifts.

It seems to me, however, that only a legislatively adopted or Commission adopted plan is within the "once-a-decade" provisions of 3(b), a brief reinforced by the fact that the effect of the final paragraph of the majority opinion provides that post-1972 elections shall be conducted pursuant to a legislatively or commission-adopted redistricting plan. Thus, the net result of the court's action is to convert into a one-election, one-year plan what was intended as a ten-year plan. If political fortune heavily favors one or the other of the major political parties in 1972, a substantially more partisan redistricting plan will be legislatively approved in 1973. That plan would then remain in effect for

such portion of the ten-year period as remained and the next decennial reapportionment would then be undertaken by a heavily partisan legislature, thus, in all likelihood, perpetuating political control of the legislative branch of our State government in the hands of one or the other of the major parties. Such a result seems to me fundamentally undesirable.

Too, it should be remembered that any plan so adopted in 1973 will, almost automatically, be contested as this one was in both State and Federal courts with all of the uncertainty and instability in the election process which necessarily results. Certainly and stability in the boundaries of election districts (to the extent achievable in the narrow limits of existing "one-man one-vote" requirements) are, I think, highly desirable. The temporary redistricting plan which this court now creates serves only to promote an oppsite result.

Whatever respondents may consider the other faults of the plan before us to be, there is no claim that it is heavily weighted in favor of either major party. I cannot agree that it should be converted into a temporary arrangement, nor that the General Assembly should be required to dissipate its time and energy in an effort to reapportion in 1973 when the best efforts of our legislators should be concentrated on resolving the truly significant problems before them.

APPENDIX C.

[Seal]

STATE OF ILLINOIS, OFFICE OF CLERK OF THE SUPREME COURT.
Springfield
62706

January 27, 1972

Justin Taft
Clerk

Telephone
Area Code 217
525-2035

Mr. Jerome H. Torshen
Attorney at Law
11 So. LaSalle St.
Chicago, Illinois 60603

No. 44744—People ex rel. William J. Scott, Attorney General, petition, vs. John A. Grivetti; et al., respondents. Complaint.

You are hereby notified that the Supreme Court today *denied* the petition for rehearing in the above entitled cause. Opinion modified on the last page and the concurring and dissenting opinion modified upon denial of petition for rehearing, a copy of each page as modified being enclosed.

Very truly yours,

/s/ Justin Taft,
Clerk of the Supreme Court.